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Attorney for defendant Convergent Outsourcing, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

| | | |
|-------------------------------|---|--|
| ERVIN MIDDLETON, |) | Case No.: |
| |) | |
| Plaintiff, |) | <i>Removed from the Justice Court, Las Vegas</i> |
| |) | <i>Township, Clark County, Nevada</i> |
| v. |) | <i>Case No. 12A-002220</i> |
| |) | |
| CONVERGENT OUTSOURCING, INC., |) | NOTICE OF REMOVAL OF CIVIL |
| |) | ACTION |
| Defendant. |) | [28 U.S.C. §§ 1331, 1441, and 1446] |
| |) | |

TO THIS HONORABLE COURT:

PLEASE TAKE NOTICE defendant Convergent Outsourcing, Inc., (“Convergent”) hereby removes this action from the Justice Court, Las Vegas Township for Clark County, Nevada, to the United States District Court for the District of Nevada pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. In support of removal, Convergent states as follows:

I. THE STATE COURT ACTION

1. On or about July 2, 2012 plaintiff Ervin Middleton filed a civil action in the Justice Court, Las Vegas Township of Clark County, Nevada, styled as *Ervin Middleton v. Convergent Outsourcing, Inc.*, Case 12A-002220 (the “State Court Action”). A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

2. The allegations of the Complaint allege the violation of the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and the federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq. Complaint, p. 1.

3. As set forth more fully below, this case is properly removed to the United States District Court for the District of Nevada, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, because the procedural requirements for removal are satisfied in that this is a civil action containing the interpretation of federal statutes; specifically, the TCPA, 47 U.S.C. § 227 and the FCRA, 15 U.S.C. § 1681 et seq.

II. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings filed in the State Court Action are attached as **Exhibit A**.

5. Plaintiff's Complaint was filed in the Justice Court, Las Vegas Township of Clark County, Nevada, on or about July 2, 2012. *See* Ex. A. The Complaint was served on Convergent on July 27, 2012.

6. This notice of removal is timely as it has been filed within thirty days of defendant being served with the Complaint. 28 U.S.C. § 1446(b).

7. The United States District Court for the District of Nevada embraces the locality in which the State Court Action is now pending, making this Court a proper forum pursuant to 28 U.S.C. § 1441(a).

8. No previous application has been made for the relief requested herein.

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on plaintiff, and a copy is being filed with the Justice Court, Las Vegas Township of Clark County, Nevada.

10. If any question arises regarding the propriety of the removal of this action, Convergent respectfully requests the opportunity to present briefing and/or oral argument in support of its position that this case is removable.

III. STATEMENT OF JURISDICTION

11. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331 and is one that may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.

1 **IV. FEDERAL QUESTION JURISDICTION**

2 12. This action is a civil action containing the interpretation of federal statutes;
3 specifically, the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and the
4 Federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq. Complaint, p. 1.

5 13. This Court has original jurisdiction under 28 U.S.C. § 1331 over claims that
6 require interpretation of the FCRA because the statute at issue is the law of the United States.
7 The FCRA provides that “[a]n action to enforce any liability created under this title may be
8 brought in any appropriate United States district court, without regard to the amount in
9 controversy, or in any other court of competent jurisdiction.” 15 U.S.C. § 1681p.

10 14. This Court also has original jurisdiction because the “complaint establishes either
11 that federal law creates the cause of action or that the plaintiff’s right to relief necessarily
12 depends on resolution of a substantial question of federal law.” *Franchise Tax Board v.*
13 *Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983); *Grable & Sons Metal*
14 *Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 313 (2005) (holding a claim under
15 state law can give rise to federal question jurisdiction if it “appears from the [complaint] that the
16 right to relief depends upon the construction or application of [federal law].”). The claims set
17 forth in the instant complaint arise under laws of the United States because the claims necessarily
18 depend on the remedies available under 15 U.S.C. § 1681 et seq. and 47 U.S.C. § 227.

19 15. Plaintiff specifically bases his claims on Convergent’s violation of federal law,
20 namely, violations of 15 U.S.C. § 1681 et seq. and 47 U.S.C. § 227. Complaint, p. 1.

21 16. Plaintiff states the following: “I, Ervin Middleton, state that Defendant
22 [Convergent] owes Plaintiff [Ervin Middleton] the sum of \$5,000 for violations of the TCPA
23 (Telephone Consumer Protection Act) and FCRA (Fair Credit Reporting Act).” Complaint, p. 1.

24 **V. SUPPLEMENTAL JURISDICTION**

25 17. To the extent any state law claims are alleged, under 28 U.S.C. § 1367(a), this
26 Court also has supplemental jurisdiction over plaintiff’s state law claims. *See* 28 U.S.C. §
27 1367(a) (The court has “supplemental jurisdiction over all other claims that are so related to
28 claims in the action within such original jurisdiction that they form part of the same case or

1 controversy under Article III of the United States Constitution.”). Here, to the extent plaintiff
2 asserts a state law claim for violation of the TCPA, plaintiff’s state law claims are based on the
3 same alleged conduct that is the purported basis for the claims arising out of federal questions of
4 law.

5 **VI. CONCLUSION**

6 18. For all of the foregoing reasons, the State Court Action may be removed to the
7 United States District Court for the District of Nevada, the federal court for the district and
8 division embracing Clark County pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

9 19. WHEREFORE, Convergent respectfully requests that the Court assume full
10 jurisdiction over this action as if plaintiff had originally filed his claims in this Court.

11 DATED this 15th day of August, 2012.

12 Respectfully submitted,

13 GORDON & REES LLP

14 /s/ Craig J. Mariam

15 Craig J. Mariam

16 *Attorney for defendant Convergent Outsourcing,*
17 *Inc.*

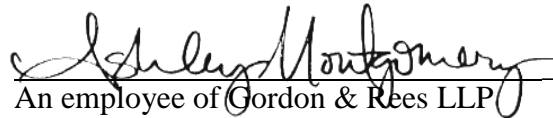
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of August, 2012, a copy of the foregoing
NOTICE OF REMOVAL OF CIVIL ACTION was filed electronically. Notice of this filing
will be sent by operation of the Court's electronic filing system to all parties indicated on the
electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may
access this filing through the Court's electronic filing system.

BY U.S. MAIL:

Ervin Middleton
5146 Caliente
Las Vegas, NV 89119
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An employee of Gordon & Rees LLP

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